

03C/B 7307

30 April 1957

MEMORANDUM FOR: Inspector General

SUBJECT: Anti-Communist Legislation and Administrative
Procedures in Cuba

REFERENCE: Chief, WH Memorandum to Chief, CI, dated
28 January 1957

1. I understand it to be your hope that the Agency will be able to provide suggestions for consideration by the Minister of the Interior of Cuba in connection with the redrafting and implementing of anti-Communist legislation. The referenced memorandum requested support in this connection from the Office of General Counsel.
2. I have prepared and am forwarding herewith a loose-leaf notebook containing pertinent United States laws, regulations and administrative procedures. Since all of these materials are unclassified, this notebook could be made available or presented to a Cuban official if you so desired.
3. This compilation, organized on a subject basis, provides a view of the problem as it has been approached by this Government within the framework of our own Constitution and laws. The legal systems of Cuba and the United States reflect differing historical origins and disparate social, economic and political factors that have affected their respective evolutions. It appears, therefore, that we can be of most assistance relative to the present inquiry by providing an organized body of materials which describe in some detail the manifestations of espionage, subversion, et al. that have seemed threatening to us, materials which indicate, also, the techniques employed to counter these manifestations. With such a reference, it is possible for the legal specialist or government official under a system of jurisprudence differing from our own to identify concepts, to compare definitions, to recognize common aspects of the problem, and to adapt this information to the particular requirements of his own legal system.

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4. Court decisions, indicating the nature of the enforcement effort by this Government under the so-called Smith Act, 18 USC 2385 relating to treason and sedition, have been largely omitted from our compilation, since they are based on constitutional interpretations unique to the United States. However, a brief comment may be useful. Some dozen cases have reached the federal courts involving this statute. The leading case is Dennis v. U. S., 341 U.S. 494, 71 S. Ct 857, 95 L. Ed. 1137 (1950), in which the defendants, who were the national leaders of the Communist Party USA, were indicted under the portions of the statute forbidding the publication or circulation of materials advocating the violent overthrow of the Government and the organization of a society dedicated to that end. The record and decision in this case contain significant aspects of the experience of this Government in administering the statute. We would be pleased to provide added details on this and later cases if it is believed that such materials would be helpful.

5. It would be a possible disservice to attempt to make a substantive analysis of the proposed Cuban legislation. An authoritative appraisal of such a comprehensive regulatory mechanism demands a thorough familiarity with the legal structure which interprets and enforces such a statute, the political institutions which it subverts, and the social and economic organizations and forces upon whose workings it is imposed. However, since several of the Articles of the proposed law deal with subjects covered in the materials provided herewith, a comparative analysis by the Cuban draftsman may be possible. I believe that our own comments should not go beyond the observation that the Cuban statute is broad and comprehensive in its coverage and appears sweeping enough to encompass many if not all of the manifestations of international Communism. It is not possible to discuss the specific language of the statute since the descriptive words used and the degree of definiteness embodied in the text must be tested against indigenous legal standards of form, content, and specificity that the outsider can not measure.

6. The Table of Contents of our loose-leaf notebook is appended herewith for the information of other recipients of this memorandum.


Assistant General Counsel

cc: Chief, WH Division

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NOTES FOR ANTI-COMMUNIST LEGISLATION

Article 1.- Political action inherent in international Communism is hereby declared illegal in that it attempts against the democratic regime of the government of the Republic and the full national sovereignty. Hence, in accordance with Article 137 of the Constitution of the Republic, organizations which support or foster or which have supported or fostered in Cuba the political action of international Communism are forbidden whether or not they are established as legal entities and whatever be their nature or structure if they are legal entities.

At the time when any association or society applies for registration, the Provincial Governor or other Government authority with whom associations must register will always investigate its real and evident purpose, the character and political affiliation of its leaders and members so as to determine if it is or is not an organization with anti-democratic goals.

Article 2.- For the purposes of this Law, political action inherent in International Communism is the engaging in any activity employing any means of diffusion, either spoken, written or televised or by any other means, aimed at practicing within the National territory the imperialist political line laid down by the governments of foreign countries organized under Communist or anti-democratic regimes or international organizations seeking that goal.

Article 3.- Personal participation by either joining the organizations mentioned in Article 1 or by co-operating or helping them or by intervening in any way with their functioning is likewise declared illegal.

All persons belonging to, working for, co-operating with, helping, or in any way being connected with organizations with the purpose of Communist activity in any form will be penalized as follows:

a) Imprisonment for from 6 months and 1 day to 1 year when the activity engaged in is simple propaganda of Communist ideology.

b) Imprisonment for from 1 year and 1 day to 3 years when the activity engaged in is that of ~~disturbing~~ disturbing public order by public demonstrations, meetings, or other activities in the streets, or by instigating, proposing or encouraging workers' strikes at places of production or employment. The organizers and the mere participants will be considered in all cases equally criminally liable. The penalties will be increased by one-third to one-half when the strike, sabotage, or boycott is carried on against industries classified as for world supply or of war, such as the sugar mills (centrales), sugar-cane fields and other industries and enterprises for public service and national supply.

c) Imprisonment for from 3 years and 1 day to 6 years when the activity engaged in consists of recruiting men or organizing groups for the purpose of fomenting an armed movement against the power of the State to change the democratic regime on which the Republic is based for another of a Communist type or of a Soviet nature. Imprisonment for from 6 years to 15 years if an insurrection has taken place.

d) Imprisonment for from 6 months and 1 day to 1 year when the activity engaged in consists of any type of civil or passive resistance against orders or dispositions issued by any Government authority, administrative or judicial, involving any form of stoppage of the economic life of the country such as strikes, closing of business establishments, and other types of boycott or sabotage such as those known as "sit-down" and "slow-down" strikes, as well as instigation or fomenting resistance to the payment of fees or taxes.

When as a result of the strike, boycott, sabotage or other activity instigated or carried on by Communists there has been damage to property belonging to others, such as machinery, raw materials, the Tribunal de Urgencia (Emergency Tribunal) trying the crimes herein sanctioned will always send a transcription of the testimony to the proper Juzgado Correccional (criminal court) or Juzgado de Instruccion (court of instruction) for the consideration of the crime or damage.

In all cases in which the accused is found guilty of this type of damage, he will be penalized, in addition to the main penalty with the civil obligation to pay full indemnity for the damage. This responsibility will apply to all if there are several persons found guilty.

When the guilty person condemned to civilly pay indemnity to the injured party is the latter's employee or worker, partial deductions will be made from his salary, wages, or remuneration until the full and final payment has been made. The Court will fix in each case the amount for each of said partial amounts in accordance with the salary earned by the person required to pay.

Article 4.- For the purposes of the provisions of the previous Article, the vinculation and personal participation in illegal, clandestine associations or entities will be presumed when reading material, propaganda, periodicals, or any printed or handwritten materials containing Communist apologia is carried or proselytizing in its behalf is engaged in.

Imprisonment for from 6 months and 1 day to one year will be imposed on persons having in their possession, whether on their person, at their home, or at any other place within their sphere of action, materials described above.

Article 5.- Without prejudice to the previously fixed penalties, the Minister of Government will order whatever measures which may be required for the purposes of the provisions in Article 1 of this Law and in each case will decree the suspension and dissolution of the Organization to which this precept refers.

Article 6.- As a complement to the declaration of illegality of international Communist political action contained in Article 1 of this Law, performance of a public service and the duties of leaders or policy makers of organizations in the fields of labor, management, education, recreation, society, or of any other nature are hereby declared incompatible with engaging in Communist activity in any of its manifestations. Hence, whoever professes Communist ideology or carried on that activity will be immediately removed from the post, job, or position he may hold in accordance with the procedures established by this Law without prejudice to the sanctions which they may have incurred under Articles 3 and 4.

Article 7.- For the purposes of the previous Article, public service is that provided the State, a Province, a Municipality, or Autonomous Organisms of all kinds, including the University, both private and official, and that provided to the public service enterprises.

Public service enterprises are those which, because of the social purpose of their nature, are so important that they are necessary for normal social life and those others which indirectly contribute to the support of the population such as the companies operating the piers, bonded warehouses, steamship enterprises and the life.

Article 8.- The dismissal referred to in Article 6 of this Law will be made by administrative order, after a hearing with the interested party, in accordance with the procedure especially established by this Law.

When the case is one involving employees of a Government Ministry or of the Autonomous Organisms or attached or dependent on one of the other, the formulation, transmittal and settlement of the order will correspond to the Minister concerned or the President or the head of the Autonomous Organism involved, as may be the case, or the person whom either of them deputize, who, in this event, must be a lawyer.

When the case involves persons in Provincial and Municipal Governments, the Provincial Governor and the Municipal Mayors, respectively, are invested with the authority to initiate and transmit the orders.

When the case is one involving public services as defined in Article VII of this Law, this power will be in the hands of the Minister of Labor, the highest authority of the Nation in the field of labor.

Article 9.- The orders referred to in the previous Article will be initiated by the pertinent officer as soon as he learns of the cause or at the request of the Minister of Government who will insist on every case upon learning of it from the Security Forces or at the request of the Bureau for the Repression of Communist Activities established by the Decree Law No. 1978, dated 27 January 1955, published by the Official Gazette of the Republic on 29 January 1955.

Article 10.- The authorities designated by this law for the formulation of the order will initiate the same by a resolution containing a statement of (resolucion fundada) which will decree the immediate suspension of the person from work and salary who is imputed with the cause for dismissal and will designate the Judge of the Court of Instruction and the Secretary who will transmit the order after they have taken the prescribed oath.

Article 11.- The transmittal of the orders will be subject to the following regulations:

a) The Judge will immediately inform the accused of the resolution wherein is stated the reasons for its initiation and of his suspension from work and salary; the accused will be granted 3 days in which to present a refutation and provide pertinent evidence. The evidence in the hands of the Judge will also be presented and attached to the order within 10 days.

b) If the employee does not present his refutation within the 3 days mentioned above the order will continue in effect.

c) After the period of time mentioned in section a) above, the Judge will propose to the party who requested the formulation of the order the decision which he considers pertinent and will inform the accused within 2 days.

d) The notification of the accused of all the resolutions and steps taken in the proceedings will be published in the Official Gazette in the event that the defendant were not located and this notification will fulfill all the legal requirements.

e) The defendant may make the appeals stipulated in current legislation against the decision referred to in section c) Article 12. The evidence which is presented in these proceedings may be of any kind, not being subject to any standards, at the discretion of the presiding judge provided that it can be completed within the 10 days granted for this which may not be extended.

When the evidence consists of testimony or a statement to be given by an officer or agent of the Bureau for the Repression of Communist Activities, BRAC, the presiding judge will issue the corresponding mandamus to the Vice-President-Director of BRAC who will have the necessary steps taken for the carrying out of the above mentioned duty without requiring the presentation of any data or fact which make possible the identification of the officer or agent who presents the evidence.

Article 13.- In cases involving incompatibility of a person with the functions of leader or policy making of labor or management organizations, the Minister of Labor will proceed immediately to prepare a resolution, containing a statement of its basis, dismissing from the functions exercised or from the organization or from participation in deliberative assemblies.

Article 14.- In cases involving the incompatibility of a person with leadership or deliberative functions of the other organizations referred to in Article VI of this Law, the Minister of Government will be the one who, by means of a resolution containing a statement of its basis, will dismiss from the post the person holding them or the right to participate in their assemblies.

Article 15.- In both cases, both the Minister of Labor and the Minister of Government will inform the Emergency Tribunals of the Republic of the existence of the cause and the facts so that they will exercise the criminal jurisdiction to be taken.

Article 16.- The Minister of State of the Republic, by means of the Department of Immigration, will not authorize the entrance into Cuba under any condition neither as tourist, transient or resident of agents or propagandists of international Communism. The denotation may be denied even when the person involved had obtained the corresponding visa from the Cuban consulate at the point of origin.

When the case involves foreigners coming from Soviet countries, Russian satellites or any other place behind the Iron Curtain, they will be interned at Tiscornia Camp and will be at the disposal of the Bureau for the Repression of Communist Activities. Their departure may not be authorized until said Bureau makes the corresponding report on whether or not the foreigner involved is dangerous.

Article 17.- Foreigners engaged in Cuba in propaganda or the active practice of Communist ideology, without prejudice to the penalties to which they are liable in accordance with what has been established by this law, will be expelled from national territory, in accordance with what is authorized in provisions in effect.

Article 18.- Foreigners will likewise be expelled who, even though they do not engage in the propaganda of or the active practice of Communist ideology, receive orders or instructions from abroad to be followed in the National territory either by themselves or by other persons.

Article 19.- All forms of postal materials, dispatches or telegraphic messages or of any other kind which in any way favor Communism, either by means of propaganda or statements of adherence or that may be used for carrying on its activities are hereby forbidden and declared illegal and thus may not be transmitted. Among these cases are included both messages sent within the National territory and those received from abroad.

In the event that the message is sent within the National territory, the person will be considered responsible who sends it or orders its sending. When the message is received from abroad the criminal liability will be on the person or entity to which it is addressed.

In both cases, the criminal liability will be imprisonment for from 6 months and 1 day to 1 year in accordance with the contents and gravity of the message.

Article 20.- The Emergency Tribunals of the territory of the Superior Court where they take place will be competent to receive and try all cases established under this law.

Article 21.- Whenever agents of Authority seize during their activities Communist propaganda material or literature, it will always be confiscated and, after the trial is over, it will be sent by the Tribunal which tried the case to the Bureau for the Repression of Communist Activities.

Article 22.- Transportation companies any of whose agents or executives knowingly transport material such as that described in Article 4 of this Law will be penalized through their legal representatives by a fine of between 500 and 1,000 quotas of one peso each.

Article 23.- Likewise, employees or workers of the above mentioned companies who knowing of the presence of that material do not inform promptly the authorities will be penalized by from 31 to 180 days of arrest or a fine of 31 to 180 quotas of one peso each or both.

Persons not engaged in the transportation business who in anyway co-operate in the distribution, handling, sale, or circulation of the material described in Article 4 of this law will be penalized by between 31 and 180 days of arrest or a fine of between 31 and 180 quotas of one peso each or both.

Article 25.- Persons without the necessary authorization by the authorities who make collections either by co-operation bonds, voluntary or of any other way, will be penalized by arrest for from 31 to 180 days or a fine of between 31 to 180 quotas of one peso each or both.

Making of collections will be presumed when there is just possession of the bonds, tickets or any other suitable means for making it.

Article 25.- When the collection is made by employing threats, coercion, or any other type of intimidation of the person, the penalty will be imprisonment for from 1 to 3 years.

Article 26.- For the purpose of the steps and sanctions established under this Law against Communism, the Bureau for the Repression of Communist Activities will be in charge of all investigations related to facts of this type when it acts on its own initiative or at the request of the Courts of Justice or any other Administrative or Government authority.

Article 27.- The showing of motion pictures with a plot or theme which exalts international Communism either openly or indirectly and all those coming from countries within the Communist sphere of influence is forbidden.

For this purpose, the Motion Picture Reviewing Commission of the Ministry of Government, when it believes that any motion picture may fall within the prohibition established in the previous paragraph, will inform at once the Bureau for the Repression of Communist Activities so that this organization may dictate the corresponding decision.

Persons who exhibit motion pictures declared forbidden will be penalized by arrest for from 31 to 180 days or fines between 31 and 180 quotas of five pesos each or both. The motion pictures involved will be confiscated.

Article 28.- The performance in theaters of works of which the plot of themes exalt international Communism or provide the theme for proselytizing work in its behalf are hereby forbidden.

The Minister of Government in such cases, upon being notified or requested by the Bureau for the Repression of Communist Activities, will decree the suspension of those performances.

If in spite of the suspension decree, the play continues to be performed, the director of the theater group and the theater manager and any other person or judicial entity who sponsors the performance will each be penalized by a fine of between 31 and 180 quotas of five pesos each.

Article 29.- Decree Law No. 1975 of 27 January 1955, published in the Official Gazette of the Republic in 29 January 1955, and all other decree laws, decrees, or provisions in conflict with the fulfillment of this Law, which will go into effect at the time of its publication in the Official Gazette of the Republic, are hereby abolished.